# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Criminal Revision No. 43 of 2001.**

**Judgment reserved on:13.7.2007.**

**Date of decision:20.7.2007.**

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**Rajinder Kumar .. ..Petitioner**

**Versus**

**State of H.P. .. ..Respondent**

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***Coram:***

**The Hon'ble Mr. Justice Deepak Gupta, J.**

**Whether approved for reporting ? No**

**For the Petitioner: Mr.Ashok Sharma, Advocate.**

**For respondent: Mr.R.M.Bisht, Dy.A.G.**

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**Deepak Gupta, J.**

This Revision is directed against the judgment of the learned Sessions Judge, Bilaspur passed in Criminal Appeal No.2 of 1996 decided on 5.1.2001 whereby he has upheld the judgment passed by the learned Additional Chief Judicial Magistrate, Ghumarwin in Criminal Case No.477-1 of 1993 decided on 6.2.1996 convicting the accused of having committed offences under Sections 16(1)(a)(i) and 16(1-A) read with Section 7(i) of the Prevention of Food Adulteration Act, 1954 and sentencing him to undergo simple imprisonment for a period of six months and to pay fine of Rs.1000/- under Section 16(1)(a)(i) and also to undergo simple imprisonment for a period of one year and to pay fine of Rs.2000/- under Section 16(1-A) of the Act.

The prosecution case, in brief, is that on 16.9.1993 at about 3 p.m. Sh.G.R.Puri, Food Inspector

inspected the Karyana shop of the petitioner-accused and in the presence of one witness Dharam Singh found that the accused had exposed for sale 60 k.g. of "whole Urad dal" in a shop. The Food Inspector after disclosing his identify took the sample thereof. He purchased 600 gms. of Urad Dal from the accused and the accused acknowledged the receipt of the amount in his own hand. After following the sampling procedure the Dal was sent to the Public Analyst and as per the report of the Public Analyst the Dal was found to be adulterated and also unfit for human consumption. The accused was accordingly charged for having committed offences under the Prevention of Food Adulteration Act. He pleaded not guilty and claimed trial. The Trial Court convicted the accused as aforesaid. The appeal filed by the accused was dismissed.

The main defence raised by the accused is that in fact he is not running any shop whatsoever. According to the accused the sample was taken from his residence and not from his shop. This defence has been disbelieved by both the Courts below. Though this is a pure finding of fact, to satisfy my judicial conscience I have gone through the evidence on record.

PW-2 G.R. Puri, Food Inspector, has clearly stated that the accused is running a Karyana shop in village Bhaloo. According to him the accused had kept 60 k.g. of Urad Dal for sale and he purchased 600 gms. out of that. In cross examination he has denied the suggestion

that the accused was not running any shop at village Bhaloo. He has also denied the suggestion that the accused only owns a residential house in the said village. He further states that he has seen the licence of the shop but the same has not been produced in Court.

PW-3 Dharam Singh turned hostile. However, in cross examination by the Public Prosecutor he states that he does not know whether the accused runs any Karyana Shop at village Bhaloo. He has also denied that the accused had kept 60 k.g. of Urad Dal for sale in a gunny bag. He has however admitted his signatures on the various documents and has also clearly stated that there was no pressure put on him by the Food Inspector.

The Food Inspector issued a notice in form-6 to the accused informing the accused that he had taken from the shop premises of the accused sample of "Whole Urad Dal" for analysis. The accused has counter signed this form-6. In case the accused was not running the shop he should have immediately complained to the higher authorities or should have sent a written complaint that the sample was taken from his residence. In fact in aforesaid form-6 which is Ext.P-7, Rajinder Kumar has been described as a Shopkeeper in village Bhaloo. Rajinder Kumar had signed this notice without noting any objection even though he has signed in English. The Panchnama Ext.P-2 shows that the sample was taken from the shop of Rajinder Kumar at village Bhaloo. It also shows that there was 60 k.g. of Urad Dal in a Gunni Bag.

This has been counter-signed by both Rajinder Kumar and Dharam Singh. The version of Dharam Singh that Rajinder Kumar is not running any shop is belied from this document.

No doubt the petitioner has also examined one defence witness DW-1 Vinod Kumar who has stated that the petitioner is not running any shop. It is however clear that this is a story which has been concocted and set up after the sample was taken.

Both the Courts below on appreciation of the evidence have come to a clear-cut finding of fact that the sample was taken from the shop of the petitioner. The petitioner has been unable to show that this finding is perverse. In my considered opinion after going through the evidence the Courts below rightly held that the sample was taken from the shop of the petitioner. There is no mis-appreciation of evidence nor is there any jurisdictional error in the orders of the Courts below calling for interference in the revisional jurisdiction of this Court. The Revision Petition is accordingly dismissed. Bail bonds furnished by the accused are cancelled.

**July 20 , 2007.** **( Deepak Gupta ),**
**PV** **Judge**